

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

BALCH & BINGHAM LLP,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	
U.S. COMMODITY FUTURES TRADING)	
COMMISSION,)	
)	
Defendant.		

COMPLAINT

Nature of the Action

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive relief, attorney’s fees and other appropriate relief, seeking the disclosure and release of agency records that have been improperly withheld from Balch & Bingham LLP (“Balch” or “Plaintiff) by the U.S. Commodity Futures Trading Commission (“CFTC” or “Defendant”).

Jurisdiction and Venue

2. This Court has jurisdiction over this action under both 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B).

3. Balch is a limited liability partnership with its headquarters and principal place of business in Birmingham, Alabama.

4. CFTC is an independent regulatory agency with the mandate to regulate commodity futures and option markets in the United States. CFTC is an agency within the meaning of 5 U.S.C. § 552(f).

Factual Allegations

5. On September 15, 2008, Balch submitted a FOIA request to CFTC related to all documents relied upon by the CFTC regarding various statement(s) made in the Order Instituting Proceedings Making Findings and Imposing Remedial Sanctions in CFTC docket no.: 03-09 and 03-03 (re: Dynegy & El Paso). This request was assigned the following FOIA number: FOIA No. 08-0141.

6. By letter dated November 6, 2008, CFTC provided a "partial response" to Balch's September 15, 2008 FOIA request (FOIA No. 08-0141). A true and correct copy of this "partial response" from CFTC is attached hereto as Exhibit 1.

7. CFTC's "partial response" states that the CFTC has identified "[n]ine hundred and ninety-seven pages" of material responsive to Balch's request that it has determined are exempt from disclosure and also certain unspecified "additional material that is subject to petition for confidential treatment" that the CFTC "is currently reviewing." CFTC did not provide a date certain by which its review would be complete, and has not to date provided Balch with a complete response to its request.

8. CFTC has denied Balch the opportunity to file an administrative appeal of the agency's adverse determination. CFTC's "partial response" states that "[o]nce the confidential treatment process is resolved, you may, if you wish, file an appeal for access to information denied you by this letter. Please do not file your appeal until you receive a final response to your request."

9. More than twenty (20) working days have elapsed since Balch's September 15, 2008 FOIA request to CFTC.

10. To date, CFTC has yet to notify Balch of its final response and the reasons therefore. CFTC has failed to notify Balch that it is presently entitled to appeal CFTC's adverse determination to the head of the agency.

**Balch is Entitled to Relief Based on
CFTC's Improper Withholding of Agency Records**

11. CFTC has wrongfully withheld agency records responsive to Balch's September 15, 2008 FOIA request.

12. CFTC has failed to comply with the applicable time limits required under FOIA, 5 U.S.C. § 552(a)(6).

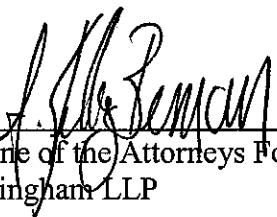
13. Balch has constructively exhausted all available administrative remedies under FOIA, 5 U.S.C. § 552(a)(6)(C).

Requested Relief

WHEREFORE, Plaintiff requests that this Court:

- A. Issue an injunction ordering CFTC to disclose the requested documents and records sought pursuant to Balch's September 15, 2008 FOIA request;
- B. Provide for the expeditious processing of this action;
- C. Award Plaintiff its costs and attorney's fees incurred in this action; and
- D. Order such other relief as the Court may deem just and proper.

Respectfully submitted this the 9th day of December, 2008.



One of the Attorneys For Plaintiff, Balch &
Bingham LLP

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